IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10483 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
RAM KRUSHNA GOPAL SONI & ORS. - Respondent(s)

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Appearance :
Shri I.M. Pandya, Assistant Government Pleader for Petitioner(s).
Shri G.C. Ray for Respondent(s) : 1.
Ms. Kruti M. Shah for Respondent(s) : 2.
None for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/08/2007

ORAL JUDGMENT

The petitioner-State Government, being aggrieved by the

order dated 6th April, 1999 passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Vadodara, is before this Court with a submission that the Appellate Authority was absolutely unjustified in directing the State Government to make the payment of gratuity to the claimant/workman – Ramkrushna Gopal Soni, though it has come on record that Ramkrushna Gopal Soni was an employee of Girls Remand Home run by a registered Trust.

2. Shri I.M. Pandya, learned Assistant Government Pleader for the petitioner-State, submitted that a perusal of the order made by the Controlling Authority under the Payment of Gratuity Act, 1972 (Annexure-B to the petition) would show that the dispute was between the workman – Ramkrushna Gopal Soni and the Secretary of the Remand Home and the State was not a party and the final order was made by the Controlling Authority against the Trust only. It is submitted that the State Government could not be joined as a party respondent at the instance of a person, who had lost before the Controlling Authority. His further submission is that joinder of the State Government/Director, Social Security Department was patently illegal. According to him, if the dispute was between the workman and the employer and even if the employees' salaries were sanctioned or granted by the State Government, then too, there would be no relationship of master and servant/ employer and employee between the State and the respondent-

workman. He submitted that the Appellate Authority erred in issuing such directions.

3. Shri G.C. Ray, learned Counsel for respondent No.1-workman, however, submitted that in fact, the claim was made against the registered Trust and he did not join the State Government as party. On being asked, he stated that as no relief was given against the State in the order passed by the Controlling Authority, the workman did not challenge the said order, nor made any claim for grant of any relief against the State Government.

4. Ms. Kruti Shah, learned Counsel for respondent No.2-Trust, appeared at a stage when both the learned Counsel, Shri I. M. Pandya and Shri G.C. Ray, had completed their arguments. She appeared and argued the matter, however, finding it difficult to give replies to the questions put by the Court, she started praying for time. When the Court refused to grant the adjournment, she said that there was some judgement of Mr. Justice Ravi R. Tripathi wherein the learned single Judge had observed that it was the duty of the State Government to maintain the Remand Homes and the State would be obliged to pay salary, etc. to the workman working in the Remand Homes. When the Court again asked for copy of the judgement, she prayed for time. The Court again refused to grant time. On this, she said that the Court may

record her request and after rejecting the same, may proceed to decide the matter. Ordinarily, such curt words when are used by a Counsel, they perilously border a serious risk, but, in case of Ms. Shah, who is yet to see her life and different colours of it, I do not propose any action against her, but, would only advise her that result oriented advocacy and high pitched arguments in the Court do not result into success. To be more successful in a Court, one has to be clear in his/her thoughts, ready on law and if not absolutely, a little mannerful in the Court. Courtesy demands courtesy and if one lacks courtesy, then, at least in the Court of law, he/she would not be respected by others. The manner in which she had behaved in the Court is not palatable. Though I could record my displeasure against her conduct, but, with folded hands, I will request her to mend her behaviour and come upto the expectations of the noble profession.

5. In the present matter, the workman made an application to the Controlling Authority for a direction to the employer to pay the amount of gratuity. The workman did not make any claim against the State Government nor the Trust ever stated before the Controlling Authority that the gratuity should be paid by the State Government either under the provisions of the social security or that it was the duty of the State Government to maintain and run the Remand Homes for Girls. It was a plain and simple matter between the master and servant.

If the State Government, finding its inability to run the Remand Homes, permits some institution, including registered trust, to run the Remand Homes and authorise the Remand Homes and its management/administration to appoint and employ the workman and also agrees to disburse some money in favour of such management/trust so that they can meet their day to day expenses. It cannot be said that such workman becomes the employee of the State Government.

6. It is not in dispute before me that day to day management of the Remand Home is in the hands of the Trust, they are managing the Remand Home and they are simply getting the grant-in-aid from the State Government. The grant-in-aid if is given by the State Government to any authority, then, employees of such authority, institution or association would not become the employees of the State Government. In number of schools and colleges, the State Government issues grant, delivers grant, sanctions grant to many of the corporations, panchayats and other authorities, the Government extends financial grant, but, such person, though under the control of the Government because of the financial assistance, would not become the Government or State for the purposes of Article 12 of the Constitution of India.

7. It is not in dispute that the respondent-workman was employed as an employee by the Trust. It is also not in dispute that the

Trust was appointing, disciplinary and dismissal authority for the said workman. If the respondent-Trust was exercising absolute control as a master over the workman, then, the liability of the Trust was to make payment of the salary and gratuity. It would have been a different thing for the Trust to say that they would make the payment of gratuity after they receive the grant, but, they could not join the State as a party respondent before the Appellate Authority and seek an order against the present petitioner for payment of gratuity.

8. The respondent-Trust, though knew well that the State or the Director, Social Security was not a party before the Controlling Authority, without seeking any permission from the Appellate Authority, it joined the Director as a party respondent. Addition of such party before the Appellate Authority is patently illegal and speaks bad against such appellant, who with an ulterior motive joins the State Government as a party respondent.

9. The payment of Gratuity Act, 1972 (39 of 1972) is an Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, etc. and for matters connected therewith or incidental thereto.

10. The word 'gratuity' imports an idea of 'gift' or 'present' in

return for favour of the services generally, but, the Payment of Gratuity Act, 1972 reverses this norm. The Act provides that a person who has completed five years or more service with the Establishment as an employee would be entitled to some gratuity. The gratuity would be payable to an employee by the employer on superannuation of the employee or on his retirement or resignation or on his death or disablement due to accident or disease.

11. Section 2(e) of the Act provides that an 'employee' means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

A fair reading and understanding of the definition of 'employee' would clearly show that an employee is the person who is engaged in or employed on services by an employer.

12. Section 2(f) provides that an "employer means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) belonging to, or under the control of, the Central Government or a State Government a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;"

Perusal of Clause (iii) of Section 2(f) of the Act would make it clear that an employer would be a person who has the ultimate control over the affairs of the establishment, etc. and where the said affairs are entrusted to any other person, whether called a manager, managing

director or by any other name. Therefore, to show that the State Government was the employer, the Trust was required to show to the Court that the State Government had ultimate control over the affairs of the establishment. If the respondent-Trust is unable to prove that the State had ultimate control over the affairs of the establishment. If it floats on the surface of records that the Trust was in absolute control of the affairs and was to act as an employer of the workman, then, the Trust would not be allowed to say that because the State extends grant-in-aid, the workman would be deemed to be an employee of the Government and even if that is not so, the State would be obliged to make payment of gratuity to the employee.

13. It was also contended by Ms. Shah that the Remand Homes are to be run by the State Government and if the State is not ready and willing to extend the grant-in-aid or pay the expenses to the Trust, then, the Trust may close down their activities. I am shocked to hear this argument. When a Trust comes into existence with a laudable object, then, the Government, so also the public, repose their trust in the said Trust. A Trust cannot say that they would run charitable activities or would manage the Remand Homes only if money is paid to them. If some money is to be paid to them, then, it is better that instead of reposing any trust in the Trust, some Non-Government Organisations (NGOs) are employed to run such institutions. The respondent-Trust

cannot be allowed to say or threaten the system that if money is not paid to them, they would stop their charitable activities. Even if they proposes to do it, it is for them and the Court has nothing to do with it.

14. In the present matter, the Appellate Authority, without appreciating that the State Government could not be held liable to make payment of the gratuity to the employee/workman, erred in observing that the State is liable to make the payment.

15. For the reasons aforesaid, I must hold that the order passed by the Appellate Authority, requiring the State to make payment of gratuity to the workman or to extend grant in favour of the respondent-Trust, is patently illegal, the said order cannot be allowed to stand, it deserves to and is, accordingly, quashed.

16. It is also to be seen that against the liability fixed upon the respondent-Trust, the said Trust has not come up with any Writ Application, therefore, their liability is absolute.

17. The petition is allowed. The State is held not liable to make payment of gratuity. Rule is made absolute. No costs.

[R.S.Garg, J.]

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